

495—33.2(17A,97B,ExecOrd11) Criteria for waiver. The agency may issue an order granting a waiver, as applied to the circumstances of a specified person, if the petitioner establishes by clear and convincing evidence that:

1. Application of the rule to that person would result in hardship or injustice; and
2. Granting the waiver on the basis of the particular circumstances of that specified person would be consistent with the public interest; and
3. Granting the waiver in that case would not prejudice the substantial legal rights of any other person.

In determining whether a waiver would be consistent with the public interest under paragraph “2,” the agency shall consider whether, if the waiver is granted, the public interest will be protected by other means that are substantially equivalent to full compliance with the rule.

33.2(1) The agency may condition the grant of a proposed waiver on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

33.2(2) This rule shall not preclude the agency from granting waivers in other contexts or on the basis of other standards if the agency deems it appropriate to do so and is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

33.2(3) The inadvertent granting of a waiver by the agency shall not be deemed to be a waiver to which the provisions of this rule apply but, depending on the facts and circumstances, the agency may limit enforcement of the affected rule(s) on a prospective basis.

33.2(4) The petitioner shall bear the burden of persuasion when a petition for waiver from an agency rule is filed.

33.2(5) When the rule from which a waiver is sought establishes administrative deadlines, the agency shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.